

REMARKS

The Claims

Claims 1-11 and 13-27 are pending in this application. Claim 12 is cancelled and new Claim 27 is added. No new matter is added to the application by the amendments to the claims. New Claim 27 includes all of the features set forth in Claims 1, 8, 9, and former Claim 12.

35 USC 112: Claim

The Examiner rejected Claim 6 under 35 USC 112, second paragraph. In making the rejection the Examiner explained that the term “outwardly extending arms” lacked proper antecedent basis. Claim 6 has been amended to change the term “outwardly extending arms” to “transversely extending arms.” The new term has proper antecedent basis in Claim 5 from which Claim 6 depends. Accordingly, it is believed that the rejection of Claim 6 under 35 USC 112, second paragraph is overcome. The amendment should be entered because it clearly overcomes the rejection and does not raise any new issues.

35 USC 102: Claims 1-11 and 16-25

The Examiner rejected Claims 1-11 and 16-25 under 35 USC 102(b) as being barred by US 4,318,658 (McIntyre). In explaining the rejection, the Examiner states:

Re claims 1-11, 16-25, McIntyre teaches a truck (generally 14) comprising: a chassis (generally 36, 38, 43) supporting a cab (generally 16) and that has an initial orientation relative to the ground, wherein the cab is at a forward end of the truck; a [sic] automatic foldable/pivotable ramp (generally 22) and a deck (generally 20) which is supported at least partly by rearmost axle (generally 32) and wheels (generally 19) by a suspension arrangement (generally 48), with a forward part of the suspension arrangement operatively connected to the chassis to move with the chassis and a rear part of the suspension arrangement operatively connected to the deck or a deck support frame to move with the deck or deck support frame, wherein the deck is tiltable relative to the chassis about a pivot axis (generally 70, 79) that provides a centre of rotation of the deck or deck support frame relative to the chassis and that is located in front of the rearmost axle of the truck and arranged such that as the deck tilts rearwardly, the chassis tilts forwardly from the initial orientation and the forward part of the suspension arrangement moves with the chassis *such that said forward part of the suspension arrangement moves upwardly toward a part of the deck immediately above the forward part of the suspension arrangement such that a vertical spacing between the forward part of the suspension*

arrangement and that part of the deck is reduced (figures 5 & 6), and such that a part of the deck immediately above the rearmost axle lowers towards the rearmost axle to provide a low loading angle of the deck. (emphasis added)

The Applicants believe that the Examiner's interpretation of the truck described and shown in McIntyre is incorrect. McIntyre does not show or describe a truck having all the features that are recited in Claims 1, 20, 21, and 24, the independent claims in this application.

Claims 1, 20, and 21 all recite the feature "the chassis tilts forwardly from the initial orientation and the forward part of the suspension arrangement moves with the chassis such that said forward part of the suspension arrangement moves upwardly toward a part of the deck immediately above the forward part of the suspension arrangement such that a vertical spacing between the forward part of the suspension arrangement and that part of the deck is reduced, and such that a part of the deck immediately above the rearmost axle lowers towards the rearmost axle to provide a low loading angle of the deck." Claim 24 recites similar features. In order to assist the Examiner in understanding the differences in the Applicants' claimed truck and the truck described in McIntyre, reference is made to Figures 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, and 5C which are appended to this response. Figures 1A, 2A, and 3A show an embodiment of the Applicants' claimed truck in flat, partly-tilted, and fully-tilted deck configurations, respectively. Figures 1B, 2B, and 3B show details of the rear suspension and chassis configuration of the truck corresponding to the positions of the deck as shown in Figures 1A, 2A, and 3A, respectively. Figures 4A and 5A show the McIntyre truck in the flat and fully-tilted deck configurations, respectively. Figures 4B and 5B show enlarged views of the rear suspension and chassis configuration of the McIntyre truck in the deck positions corresponding to Figures 4A and 5A, respectively.

Referring now to Figures 1A-3B, the Applicants' claimed truck has a suspension arrangement S. The forward part of the suspension arrangement is operatively connected to the chassis C. In the embodiment shown in the attached drawings, that connection is made by a spring mount SM. Figures 1B, 2B, and 3B sequentially show the movement of the forward part of the suspension arrangement S which is connected to spring mount SM on the chassis C, as the

deck is tilted rearwardly from the flat deck position to the fully tilted deck position. Initially (Figure 1B), there is a vertical spacing of height D1 between the forward part of the suspension arrangement S and the top of the deck D of the truck. As the deck tilts rearwardly, the vertical spacing D2 has a height that is smaller or “reduced” relative to D1 (See Figure 2B). When the deck is fully tilted, as shown in Figure 3A, the vertical spacing D3 (Figure 3B) is further reduced relative to D1, as a result of the chassis C tilting forwardly from its initial orientation shown in Figure 1B, and the forward part of the suspension arrangement moving with the chassis so that it moves upwardly toward a part of the deck D immediately above the forward part of the suspension arrangement S.

Referring now to Figures 4A to 5B, it can be seen that the McIntyre truck does not provide the same functional features as the Applicants’ claimed configuration. In McIntyre, the forward part of the suspension arrangement S is attached to the deck/deck-support frame D by means of a spring mount SM. There is a pivot P between the terminal part of the chassis C and the spring mount SM. The spring mount SM is fixedly attached to the deck/deck-support frame D. Therefore, as the deck tilts rearwardly, the chassis tilts forwardly, but the forward part of the suspension arrangement S **does not** “move upwardly toward a part of the deck immediately above the forward part of the suspension arrangement such that a vertical spacing between the forward part of the suspension arrangement and that part of the deck is reduced, and such that a part of the deck immediately above the rearmost axle lowers towards the rearmost axle to provide a low loading angle of the deck.” In the McIntyre truck, the forward part of the suspension arrangement S and the spring mount SM, necessarily move with the deck/deck-support frame D because they are physically connected together.

It can be seen that the mounting of the suspension arrangement S of the McIntyre truck is such that the vertical spacing between the forward part of the suspension arrangement S and the part of the deck immediately above the forward part of the suspension arrangement cannot change during movement of the deck. The forward part of the suspension arrangement is fixed such that it moves with the deck as the deck is tilted rearwardly. The Examiner is referred to spacings D4 and D5 in Figures 4B and 5B. Dimension D4 is the same as dimension D5 because

there can be no change in the spacing between the forward part of the suspension arrangement and the deck as the deck is tilted in the McIntyre truck.

With the Applicants' claimed arrangement, the Applicants' claimed truck provides a low loading angle without the drawbacks associated with the known trucks described in the Background section of the present application. The McIntyre truck cannot provide the low loading angle that the Applicants' claimed truck can provide, because the McIntyre truck does not have the Applicant's claimed configuration.

The Applicants' claimed truck as set forth in Claim 24 includes a similar feature wherein the deck "is configured such that when the deck is tilted rearwardly about the pivot axis, the chassis tilts forwardly from the initial orientation *and the forward part of the suspension spring moves with the chassis such that said forward part of the suspension spring moves toward a part of the deck immediately above the forward part of the suspension spring such that a vertical spacing between the forward part of the suspension spring and that part of the deck is reduced, and such that a part of the deck immediately above the rearmost axle lowers towards the rearmost axle to provide a low loading angle for the deck*" (emphasis added). Therefore, Claim 24 is not anticipated by McIntyre for the same reasons as Claims 1, 20, and 21.

It is further noted that the Applicants' claimed truck as set forth in Claim 24 includes "a chassis having a forward portion that supports a cab, a terminal portion that terminates at a location forward of said rear axle and wheel assembly, [and] a pivot portion located between the forward portion and the terminal portion . . .". McIntyre cannot be properly interpreted to describe a chassis as set forth in Claim 24. More specifically, with reference to Figures 1 and 2 of McIntyre, if the mounting plate 74 is considered to be the "terminal portion" of the chassis 38, then the pivot portion 46 is not "located between the forward portion and the terminal portion." On the other hand, if the rear section 44 of the chassis 38 is considered to be the "terminal portion" of the chassis, then the terminal portion does not terminate at a location forward of the rear axle and wheel assembly 19, 32.

In view of the foregoing discussion and the accompanying illustrations, it should now be clear that McIntyre does not anticipate the Applicants' claimed truck as set forth in Claims 1, 20, 21, and 24. Accordingly, the rejection of those claims is improper and should be withdrawn.

Claims 2-11, 16-19, and 23 depend from Claim 1 either directly or indirectly and thus, include all of the features of the Applicants' claimed truck as set forth in Claim 1. Therefore, Claims 2-11, 13-19, and 23 are novel relative to McIntyre for at least the same reasons as Claim 1. Claim 22 depends from Claim 21 either directly or indirectly and thus, includes all of the features of the Applicants' claimed truck as set forth in Claim 21. Therefore, Claim 22 is novel relative to McIntyre for at least the same reasons as Claim 21. Claim 25 depends from Claim 24 and thus, includes all of the features of the Applicants' claimed truck as set forth in Claim 24. Therefore, Claim 25 is novel relative to McIntyre for at least the same reasons as Claim 24.

35 USC 103(a): Claims 13, 14, 23, and 26

The Examiner rejected Claims 13, 14, 23, and 26 under 35 USC 103(a) as being unpatentable over McIntyre in view of US 5,887,880 (Mullican). Mullican is cited as teaching a suspension system wherein an end of the suspension is operatively connected to the deck or deck support frame via respective air bags. Mullican is also cited as teaching a suspension system wherein the deck includes a pair of apertures, spaced recesses, or movable covers which enable the wheels to extend above a lower part of the deck when the deck is tilted.

Claims 13, 14, and 23 are dependent claims that depend from Claim 1 either directly or indirectly, and thus, include all of the features of Claim 1. Claim 26 is a dependent claim that depends from Claim 24, and thus, includes all of the features of Claim 24. As discussed above relative to the rejection based on 35 USC 102(b), McIntyre does not describe or show a truck having all of the features recited in independent Claims 1 and 24. Mullican also does not disclose those claimed features.

Mullican does not contain any teaching or suggestion of operatively connecting a forward end of the suspension arrangement to the chassis to move with the chassis and a rearward end of

the suspension arrangement to the deck or deck support frame to move with the deck or support frame. Moreover, the chassis and the deck of the truck described and shown in Mullican are not arranged such that as the deck tilts rearwardly, the chassis tilts forwardly from its initial orientation. In the truck described in Mullican, the chassis moves in the same direction as the deck. See, Figures 1 and 2 of Mullican. Further, the deck and suspension system of the truck described and shown in Mullican are not arranged such that as the deck tilts rearwardly the forward part of the suspension arrangement moves upwardly toward part of the deck immediately above the forward part of the suspension arrangement. In the truck described in Mullican, the front and rear suspension members are directly connected to the deck. See Figures 3 to 6 of Mullican. Therefore, the forward part of the suspension arrangement cannot move upwardly toward the deck.

Accordingly, the proposed combination of McIntyre and Mullican does not anticipate the applicant's claimed truck. To establish *prima facie* obviousness of a claimed invention, the proposed combination must include all of the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Since the proposed combination does not include all of the features of the independent claims, nor of Claims 13, 14, 23, or 26, the rejection of those claims under 35 USC 103(a) is improper and should be withdrawn.

35 USC 103(a): Claim 15

Claim 15 was rejected under 35 USC 103(a) as being unpatentable over McIntyre in view of US 2,446,791 (Cook). In explaining this rejection, the Examiner reasoned that McIntyre teaches all of the features of Claim 15 other than the differential. Cook was cited as disclosing a truck having a differential. However, Claim 15 depends from Claim 1 and thus, includes all of the features of the Applicants' claimed truck as set forth in Claim 1. For the reasons discussed above relative to the rejection of Claim 1 under 35 USC 102(b), McIntyre does not disclose all of the features recited in Claim 1. Moreover, Cook does not describe or suggest the features of Claim 1 that are not disclosed in McIntyre. Neither the truck described in McIntyre nor the truck described in Cook has a structure that provides the claimed functional feature that "as the deck tilts rearwardly, the chassis tilts forwardly from the initial orientation and the forward part of the

suspension arrangement moves with the chassis such that said forward part of the suspension arrangement moves upwardly toward a part of the deck immediately above the forward part of the suspension arrangement such that a vertical spacing between the forward part of the suspension arrangement and that part of the deck is reduced, and such that a part of the deck immediately above the rearmost axle lowers towards the rearmost axle to provide a low loading angle of the deck.” Accordingly, the proposed combination of McIntyre and Cook does not anticipate the Applicant’s claimed truck as set forth in Claim 15.

To establish *prima facie* obviousness of a claimed invention, the proposed combination of references must include all of the claim limitations. *In re Royka, supra*. Since the proposed combination does not include all of the features of Claim 15 the rejection of that claim under 35 USC 103 (a) is improper and should be withdrawn.

Claim 12

In the Official Action, the Examiner indicated that Claim 12 would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claim from which Claim 12 depends. Claim 12 depended from Claim 1 through Claims 8 and 9. New Claim 27 includes all of the features of Claims 1, 8, 9, and 12. Therefore, Claim 27 is now in allowable form. Since new Claim 27 clearly replaces Claim 12, no new issues are raised and the amendment should be entered.

In re the Application of BARRY DOUGLAS ARMOUR
U.S. Appln. No. 10/531,488
Attorney Docket No. 0074-516912

CONCLUSION

There being no other rejections set forth in the Official Action, it is believed that the claims of this application are in condition for allowance. The Applicants respectfully request that the Examiner enter the amendment of Claim 6, enter new Claim 27, and reconsider the rejections of Claims 1-11 and 13-26 in the light of the remarks and illustrations presented herein.

Respectfully submitted,

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